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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/539,269	12/19/2005	Harold Keith Braid	231/1/146	9291
170 7590 04/13/2009 RICHARD M. GOLDBERG 25 EAST SALEM STREET SUITE 419 HACKENSACK, NJ 07601			EXAMINER TANG, JEFF	
			ART UNIT 3634	PAPER NUMBER
			MAIL DATE 04/13/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/539,269

**Applicant(s)**

BRAID ET AL.

**Examiner**

Jeff Tang

**Art Unit**

3634

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7, 9-12 and 14 is/are pending in the application.
- 4a) Of the above claim(s) 4, 5 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6, 7, 9-12 and 14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

Species 1 in Figures 1-6, 9, and 10

Species 2 in Figures 7 and 8

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

The claims are deemed to correspond to the species listed above in the following manner:

Species 1 in claims 1-7, 9-12, and 14

Species 2 in claim 5

The following claim(s) are generic: claims 1 and 9  
The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: At least Claims 1, 6, 7, and 14 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Guillemet et al. (US 6,553,620 B3). Since there are no shared technical features that are inventive, since Guillemet et al. teaches at least the broadest shared limitations, the claims are determined to lack unity under PCT Rule 13.2.

During a telephone conversation with Rich Goldberg on 10/5/08 a provisional election was made without traverse to prosecute the invention of Species 1, claims 1-4, 6,7, 9-12 and 14. Affirmation of this election must be made by applicant in replying to this Office action. Claim 5 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Although an election over the phone has been made, and an action on that election has been mailed and applicant has traversed the restriction, as noted below, examiner does not see a copy of the lack of unity write up in the scanned file, and so has provided it per above.

The amendment filed on 1/29/09 has been received.

***Election/Restrictions***

1. Applicant's election with traverse of claims 4 and 5 in the reply filed on 1/29/09 is acknowledged. The traversal is on the ground(s) that claim 4 is sufficiently broad enough to be incorporated into species I of Figures 1-6. This is not found persuasive because as applicant discloses on page (15, lines 24-25) of the application that the second embodiment in Figures 7-8a clearly states the phrase "engage" which is similar to claim 4. Claim 5 is dependent on claim 4

**Regarding applicant's traversal, examiner cites applicant's specification  
indicating the difference in embodiments per below:**

As shown in figures 7 and 8a to 8c the spring mounting elements 130a, 130b, 130c are generally similar to those of the previous described embodiment. However in this embodiment the interengagement fitting and interlocking arrangement between the spring support mounting elements 30/130 differs. Specifically the dovetail projections 36 of the lower 30a and middle 30b spring support mounting elements are replaced by a pair of shoulder supports 160 upon and within which the wedge shaped projections 134 are engaged. The shoulder supports 160 project and extend from the main body 132.

The requirement is still deemed proper and is therefore made FINAL.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claims 1, 6, 7, and 14 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Guillemet et al. (US 6,553,620 B3).** Guillemet et al. disclose a modular spring support mounting arrangement for a sash window spring counterbalance arrangement of the type including a plurality of coiled ribbon springs (33), the modular spring support mounting arrangement being adapted to be fitted within a window jamb channel and to support and secure the springs within the window jamb channel; the modular spring support mounting arrangement comprising at least a first spring support mounting element (12) and a second spring support mounting element (12) the first spring support mounting element including a pair of wedged shaped cross section projections which extend normally from the spring support mounting element and are laterally spaced apart and inwardly oppositely directed (42, Fig. 5), and the second spring support mounting element including an interengagement fitting which engages the pair of wedged shaped cross section projections together (43, Fig. 2), and at least one of: the interengagement fitting and projections define and provide a support surface for one of the coiled ribbon springs (Fig. 5, as the spring coil (33) is part of the spring support element (12)); **[claim 6]** which the interengagement fitting and pair of projections are adapted to engage and securely interconnect the first and second spring support mounting elements together by aligning the interengagement fitting and pair of projections and laterally sliding the spring support mounting elements relative to each other (Fig. 2); **[claim 7]** in which the interengagement fitting and pair of projections

together define and provide a support surface for one of the coil ribbon springs (Fig. 5); **[claim 14]** which the pair of projections comprise a pair of wedge shaped cross section projections which are inwardly oppositely directed (42, Fig. 5).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Guillemet et al. (US 6,553,620 B3) in view of Braid et al. (US 6,584,644 B2).**

Guillemet et al. disclose the invention as set forth but does not disclose a dovetail cross section. However, Braid et al. discloses a dovetail cross section (33, 36, Fig. 4).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to have modified Guillemet et al. to have included a dovetail cross section projection. The motivation for doing so would be to provide support for a ribbon spring.

6. **Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Guillemet et al. (US 6,553,620 B3) in view of Westfall (US 5,463,793).** Guillemet et al.

disclose the invention as set forth but does not disclose a narrowed neck portion.

However, Westfall discloses a narrowed neck portion corresponding to a lateral spacing between the pair of laterally spaced wedge shaped cross section projections, and the narrowed neck portion is engaged between the pair of laterally spaced wedge shaped cross section projections (57, Fig. 5). Therefore, it would have been obvious to one of

ordinary skill in the art to have provided a narrow neck as disclosed by Westfall. The motivation for doing so would be to provide a secure connection between the spring supporting elements.

7. **Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guillemet et al. (US 6,553,620 B3).** The method of installing the modular spring support would be obvious in view of Guillemet et al. For example, it would be obvious to insert the first spring support mounting element into the window jamb channel, laterally aligning the corresponding interlocking arrangement of the first and second spring support mounting elements, the interlocking arrangement comprises an interengagement fitting and corresponding projection and then to laterally slide the second spring support mounting element relative to the first spring support mounting element to engage the interlocking arrangement and securely interlock the spring support mounting elements together within the window jamb channel (Column 4, lines 16-32). It would also be obvious to slide the spring support elements to interlock and then to sliding the elements within the window jamb channel to position it. Therefore, it would have been obvious to describe the method of installation. The motivation for doing so would be to create an adjustable spring support for a sliding window.

8. **Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Guillemet et al. (US 6,553,620 B3) in view of Braid et al. (US 6,584,644 B2).** Guillemet et al. disclose the method as disclosed, but does not disclose installing the spring support mounting into a jamb channel with an access opening. However, Braid et al. discloses an access opening which allows the spring assembly to be inserted



(Column 5, lines 4-11). Therefore, it would have been obvious to one of ordinary skill in the art to include an access opening. The motivation for doing so would be to allow to insert the spring support modules.

***Response to Arguments***

9. Applicant's arguments filed 1/29/09 have been fully considered but they are not persuasive. Applicant argues that Guillemet et al. does not disclose the dual functionality of the structure of interconnection and to support the coil springs. However, as shown in figure 5, the support (12) supports the spring ribbon (32). If applicant can positively define the interconnection fittings directly supporting the spring ribbon, the application would seem allowable over the applied art.

10. In response to applicant's argument that the structure provides a dual functionality of the projections and/or interconnection fittings to connect and support the soil spring, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

11. Regarding claim 9, applicant argues that the assemblies are separately inserted. First, examiner does not see where this is claimed. Method steps do not have to be performed in the order they are listed unless required by the claim language (i.e., -- performing the following steps in the order listed—or other wording such as 'first', subsequently, etc and 'comprising' allows for additional, non-recited steps.) However, Guillemet et al's invention can perform the steps as recited.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeff Tang whose telephone number is (571) 270-5223. The examiner can normally be reached on Monday-Friday 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine Mitchell can be reached on (571) 272-7069. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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